

## **REMARKS**

### **I. Amendments to the Specification**

Applicants have amended the specification at page 4 to provide clear support for the inventions claimed in original claims 1, 13 and 23. Support for this amendment can be found in original claims 1, 13 and 23. Accordingly, no new matter is introduced by this amendment.

### **II. Status of the Claims**

Claims 1, 5, 7, 13, 16, 18 and 23 have been amended and claims 10 and 21 have been canceled. Accordingly, claims 1-9, 11-20 and 22-23 are pending in this application. Claims 1, 5, 7, 13, 16, 18 and 23 have been amended to more clearly define the claimed invention in response to the rejection under 35 U.S.C. § 112 set forth in the previous Office Action. Specifically, the claims have been amended to clearly describe the composition according to the invention as containing an effective amount of at least two acid salts. Support for the amendments to claims 1, 5, 7, 13, 16, 18 and 23 can be found in the Specification, at least at page, 3, line 28 - page 5, lines 12. Claims 13 and 23 have also been amended to more clearly define the skin areas treated in the claimed methods. Support can be found in the Specification, at least at page 1, lines 10-14 and page 9, lines 22-25. Accordingly, no new matter has been introduced by these Amendments.

### **III. Claim Rejections 35 U.S.C. § 112**

The Examiner has rejected claims 1-23 as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner argues that “according to the formula of the acid salt shown in applicants’ specification, the salt contains only one anionic counterion” and further that “the claim is vague and indefinite because the acid salt as claimed cannot be formed as recited, according to the applicants’ disclosure.” Applicants respectfully traverse.

It is clear from the specification that the salt is formed by reacting the desired alkanolamine with a mixture of at least two acids to form a mixture of two salts. As recited in claim 1 and on page 3, lines 28-30, A is a mixture of anionic counterions derived from at least two pharmaceutically acceptable acids and esters thereof. Accordingly, Applicants respectfully submit that the claims are clear and definite. Nevertheless, solely in an effort to expedite prosecution, Applicants have amended claims 1, 13 and 23 to clearly define the composition as

comprising “at least two acid salts.” Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 112 be withdrawn.

#### IV. Claim Rejections 35 U.S.C. § 102

##### *The Rejection In View Of Yu et al.*

The Examiner has rejected claims 13-17 as allegedly anticipated by U.S. Patent No. 4,197,316 (“Yu et al.”). Applicants respectfully traverse this rejection.

Yu et al. relates to compositions and methods for treating dry skin. The compositions comprise an acid, amide or ammonium salt of  $\alpha$ - or  $\beta$ - hydroxyacids or  $\alpha$ -ketoacids and esters thereof. Yu et al. does not teach that the compositions taught therein could be used to effect changes in facial contours. In fact, Yu et al. does not even mention facial contours. How can a reference that does not even mention facial contours render obvious a method for improving the appearance of facial contours by treating affected skin areas?

The Examiner argues that the “claimed method of ‘improving the appearance of facial contours’ is met because the prior art method is to improve a skin condition.” Applicants respectfully disagree. Yu et al. does disclose a method for improving a skin condition, however, the method is clearly limited to improving skin conditions associated with dry skin, i.e., cracking, flaking or scaling of hands, feet or the body.” See col. 1, lines 16-19. There is no teaching or suggestion of a method for improving the appearance of facial contours.

In response to Applicants arguments, the Examiner states “there is no distinction between improving skin conditions such as dry skin, which may be facial skin, and improving facial contours.” Applicants respectfully disagree. As the Examiner is well aware, a wide variety of skin conditions exist, e.g., acne, dryness, erythema, etc. One of ordinary skill in the art would not expect that a method for treating one skin condition would be successful for treating all other existing skin conditions.

Instant claims 13-17 are directed to a **method** to improve the appearance of **facial contours** by treating skin areas **affected by changes in the appearance of facial contours**. Improving facial contours refers to physical movement and lifting of facial skin to define and reshape the contours of their face and provide a more youthful appearance. See Specification, page 3, lines 3-5 and lines 13-15. Relieving dry skin (as taught by Yu et al.) does not provide

movement of skin surface, nor change the overall facial shape and contours as does the instant invention. Indeed, as shown by Example 8 of the present specification, over 50% of consumers tested agreed that the method of the present invention defined and reshaped the contours of their face. Since Yu et al. fails to teach a method for improving the appearance of facial contours, Yu et al. does not teach all the elements of the claimed invention, and Yu et al. cannot anticipate the present claims. Accordingly, Applicants respectfully request that this rejection be withdrawn.

## **V. Claim Rejections 35 U.S.C. § 103**

### *A. The Rejection Over Yu et al. In View of Znaiden et al. and Perricone*

The Examiner has rejected claims 1-11 and 18-23 as allegedly unpatentable over U.S. Patent No. 5,523,090 (“Znaiden et al.”) and U.S. Patent No. 5,554,647 (“Perricone”). Applicants respectfully traverse this rejection.

As discussed above, Yu et al. relates to a method for treating dry skin. Yu et al. fails to teach or suggest that the Yu et al. compositions could be used to improve skin firmness, improve the appearance of facial contours or reduce the appearance of sagging skin. Nothing in the teachings of Znaiden et al. or Perricone cures these deficiencies of Yu et al.

Applicants respectfully submit that the Examiner has failed to establish a prima facie case of obviousness. The Examiner simply states that “the motivation and the expectation of success is found in the collective teachings of the references that the recited alkanolamines and the alpha hydroxy acids are each well known in treating aged skin conditions.” There is nothing in the teachings of any of the references relied upon by the Examiner that would provide one of ordinary skill in the art with the expectation that one composition taught to be useful for treating one skin condition, i.e., dry skin, could also be used for treatment of a completely different skin condition, i.e., improving skin firmness.

In response to Applicants arguments, the Examiner states that “it is well known in the art that dry skin is associated with aging and sagging skin.” The Examiner relies upon Perricone as support for that statement, citing col. 1, lines 31-58 (stating “treatment of sun-damaged and aged skin consists primarily of application of various creams, lotions and gels to add moisture to the skin”). Applicants respectfully disagree with the Examiner’s interpretation. Perricone is not

saying that by treating dry skin you also treat sagging skin. To the contrary, Perricone specifically states that “Current treatments of placid skin and muscles from aging typically involve plastic surgery.” See col. 1, lines 51-52. There is no teaching or suggestion in Znaiden et al. (taken alone or in combination with Perricone), that would provide one of ordinary skill in the art that the compositions described in the present claims could be used to improve skin firmness, improve the appearance of facial contours or reduce the appearance of sagging skin. Accordingly, Applicants respectfully request that this rejection be withdrawn.

*B. The Rejection Over Yu et al., Znaiden et al., and Perricone In View of Quan et al.*

The Examiner has rejected claim 12 as allegedly unpatentable over Yu et al., Znaiden and Perricone in view of U.S. Patent No. 6,180,133 (“Quan et al.”). The Examiner recognizes that none of the references previously relied upon by the Examiner teach or suggest the material carriers recited by claim 12. Applicants respectfully traverse this rejection.

As discussed above, each of Yu et al., Znaiden et al. and Perricone fail to teach or suggest that the compounds recited in the present claims could be used to improve skin firmness, improve the appearance of facial contours or reduce the appearance of sagging skin. In contrast to the claimed methods, Quan et al. relates to methods for treating wrinkles.

In response to Applicants arguments, the Examiner states that “the wrinkle treatment certainly is in the same skin cosmetic art as in treating dry and aging skin.” Applicants disagree. Dry skin and wrinkled skin are two different skin conditions. One can have wrinkles and not have dry skin and one can have dry skin and not have wrinkles and vice versa. There is absolutely nothing in any of the references relied upon by the Examiner, taken alone or in combination, that suggests that compositions that are useful for treating dry skin would also be useful for treating wrinkles. Accordingly, Applicants maintain that Quan et al. does not remedy the deficiencies of Yu et al., Znaiden and Perricone. Applicants, therefore, respectfully request withdrawal of this rejection.

**VI. Double Patenting Rejection**

The Examiner has provisionally rejected claims 13-22 as allegedly being unpatentable over claims 1, 2, 4-7, 10-12 and 14-16 of copending Application No. 09/677,737. Applicants respectfully traverse this rejection.

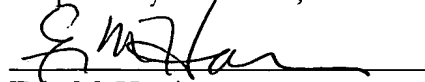
Copending Application No. 09/677,737, relates to methods for ameliorating redness or inflammation of mammalian skin (claims 1-10) and methods for ameliorating the irritating effects of a skin irritating composition (claim 11-16). The copending application fails to teach or suggest the methods of the presently claimed invention for improving the appearance of facial contours. In response to this argument, the Examiner states that "ameliorating redness or inflammation would obviously lead to improvement of the appearance of the skin." Applicants agree that ameliorating redness or inflammation could in some cases lead to improvement of the appearance of the skin. Applicants would like to remind the Examiner that the present claims are not simply methods for improving the appearance of the skin. Rather, the claimed methods relate to methods for improving the appearance of facial contours. Such a method is not taught or suggested by copending application no. 09/677,737. Accordingly, Applicants respectfully request withdrawal of this rejection.

#### **VII. Conclusion**

Applicants believe that the foregoing presents a full and complete response to the outstanding Office Action. An early and favorable response to this Amendment is earnestly solicited. If the Examiner feels that a discussion with Applicants' representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants' representative at the number provided below.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/JBP-534/EMH. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,



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